

Fill in this information to identify the case:

Debtor 1 21st Century Valet Parking, LLC

Debtor 2
(Spouse, if filing) _____

United States Bankruptcy Court for the: Central District of California

Case number 1:22-bk-11415-VK

Official Form 410**Proof of Claim**

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>National Labor Relations Board, Region 31</u> Name of the current creditor (the person or entity to be paid for this claim)		
	Other names the creditor used with the debtor _____		
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____		
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>National Labor Relations Board, Region 31</u> Name <u>11500 West Olympic Blvd., Suite 600</u> Number Street <u>Los Angeles CA 90064</u> City State ZIP Code Contact phone <u>(310) 235-7351</u> Contact email <u>nayla.wren@nlrb.gov</u>	Where should payments to the creditor be sent? (if different) <u>National Labor Relations Board, Region 31</u> Name <u>11500 West Olympic Blvd., Suite 600</u> Number Street <u>Los Angeles CA 90064</u> City State ZIP Code Contact phone <u>(310) 307-7342</u> Contact email <u>kristen.scott@nlrb.gov</u>	
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____			
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY		
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____		

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: <u>1</u> <u>8</u> <u>2</u> <u>5</u>
7. How much is the claim?	\$ <u>962,633.76</u> Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Complaint, backpay wages, and other benefits</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☐ No

☒ Yes. Check one:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ _____

☐ Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☒ Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ 253,060.00

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 01/06/2023
MM / DD / YYYY

Kristen L. Scott
Signature

Print the name of the person who is completing and signing this claim:

Name	Kristen	L.	Scott
	First name	Middle name	Last name
Title	Compliance Officer		
Company	National Labor Relations Board, Region 31		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	11500 West Olympic Blvd., Suite 600		
	Number	Street	
	Los Angeles	CA	90064
	City	State	ZIP Code
Contact phone	(310) 307-7342		Email kristen.scott@nlrb.gov

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National Labor Relations Board

Region 31

11500 W. Olympic Blvd., Suite 600

Los Angeles, California 90064

Telephone: (310) 235-7351

Facsimile: (310) 235-7420

Attorneys for Creditor

National Labor Relations Board

UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

In re:

21ST CENTURY VALET PARKING, LLC

Debtors and Debtor in Possession.

Case No. 1:22-bk-11415-VK
CHAPTER 11

DECLARATION OF KRISTEN SCOTT IN
SUPPORT OF PROOF OF CLAIM

I, Kristen L. Scott, declare as follows:

1. I am a Compliance Officer for the National Labor Relations Board (“NLRB” or “Board”), an agency of the United States Government, located in Los Angeles, California. I have held this position with Region 31 of the NLRB since 2017.

2. This declaration is in support of the Board’s Proof of Claim which is being filed concurrently with this declaration. I have reviewed the Board’s Proof of Claim and the supporting

1 exhibits attached thereto as **Exhibits A through D** and described below. The assertions contained
2 in the Board's Proof of Claim are true and correct to the best of my knowledge and belief.

3 3. On December 6, 2022, 21st Century Valet Parking's ("Debtor") filed a voluntary
4 bankruptcy petition for itself, under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §
5 101, *et seq.*

6 4. Debtor is alleged to have engaged in pre-petition unfair labor practices in violation
7 of Section 8(a)(1) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 *et seq.* and to be
8 liable for monetary remedies for that conduct. The facts regarding the pending NLRB
9 administrative unfair labor practice proceeding are as follows:

10 a. From March 7, 2022, through September 16, 2022, employees and former
11 employees of Debtor filed a series of unfair labor practice charges with Region 31 of the NLRB
12 alleging that Debtor engaged in a variety of unfair labor practices by, inter alia, terminating
13 eighteen employees who raised workplace safety concerns, in violation of Section 8(a)(1) of the
14 National Labor Relations Act, 29 U.S.C. Sec. 158(a)(1) (NLRA).

15 b. On August 17, 2022, Actors' Equity Association filed a petition (Case 31-
16 RC-301557) with Region 31 to represent a unit comprised of strippers, dancers and entertainers
17 working at Debtor's facility.

18 c. On October 6, 2022, the Regional Director of Region 31, Mori P. Rubin,
19 issued a Decision and Direction of Election, determining that Debtor met the threshold for NLRB
20 jurisdiction and ordering an election in the matter. A copy of the administrative decision is
21 attached as **Exhibit A** and made part of this declaration.

22 d. Based on the charges described above in Paragraph 4(a), on December 6,
23 2022, the Regional Director for Region 31, on behalf of the NLRB's General Counsel, issued an
24 administrative unfair labor practice Consolidated Complaint and Notice of Hearing ("Complaint")
25 against the Debtor ("Respondent" in the administrative case), alleging, in part that it violated
26 NLRA § 8(a)(1) of the Act (29 U.S.C. §§ 158(a)(1)) by discharging and/or locking out named
27 employees ("discriminatees") in retaliation for their engaging in protected concerted activities and
28

1 to prevent future concerted activities. A copy of the administrative Complaint is attached as
 2 **Exhibit B** and made part of this declaration.

3 e. On December 12, 2022, the Regional Director for Region 31 issued an
 4 administrative Report on Challenged Ballots, Order Consolidating Hearing with the Complaint and
 5 Notice of Hearing (“Order Consolidating”), which consolidated Case 31-RC-301557 with the
 6 cases subject to the Complaint described in Paragraph 4(d). A copy of the Order Consolidating is
 7 attached as **Exhibit C** and made part of this declaration.

8 5. The Complaint remains pending with the NLRB. It is currently scheduled to be
 9 heard by an Administrative Law Judge (ALJ) of the NLRB on March 7, 2023. Region 31 intends
 10 to successfully litigate this matter, absent pre-hearing settlement with the involved parties. The
 11 Complaint includes customary remedies as a result of the Debtor’s unlawful conduct. Assuming
 12 Region 31 successfully litigates this complaint before the ALJ, and the Board affirms the ALJ’s
 13 decision, the Debtor will be ordered to make the discriminatees whole for any loss of earnings and
 14 other benefits suffered as a result of the unlawful terminations of their employment.

15 6. Pursuant to standard Board practices and procedures, the make whole remedy here
 16 includes:

- 17 a. Backpay for wages that would have been earned if not for the unlawful action,
 18 minus any interim earnings in accordance with *F.W. Woolworth Co.*, 90 NLRB
 19 289 (1950), with interest compounded daily as prescribed in *New Horizons.*,
 20 283 NLRB 1173 (1987), and *Kentucky River Medical Center*, 356 NLRB No. 8
 21 (2010);
- 22 b. Compensation for excess taxes resulting from the adverse tax consequences of
 23 receiving a lump sum backpay award. *AdvoServ of New Jersey, Inc.* 363 NLRB
 24 No. 143 (2016);
- 25 c. Compensation for search-for-work and interim employment expenses,
 26 regardless of whether those expenses exceed interim earnings. *King Soopers,*
 27 *Inc.*, 364 NLRB No. 93 (2016). The search-for-work and interim expenses shall
 28 be calculated separately from taxable net backpay, with interest compounded

1 daily as prescribed in *New Horizons*, supra, and *Kentucky River Medical Center*,
 2 supra; and

- 3 d. Compensation for all direct and foreseeable pecuniary harms that the
 4 discriminatees suffer as a result of the Debtor's unfair labor practices. *Thryv*,
 5 *Inc.*, 372 NLRB No. 22 (December 13, 2022).

6 7. The exact amount of the monetary remedy owed has not yet been determined but
 7 would be calculated in accordance with well-established NLRB procedures. In the event the NLRB
 8 determines that the Debtor is liable for backpay to the discriminatees, the exact amount of the
 9 NLRB's claim will then be liquidated by the NLRB, absent settlement by the parties.
 10 Accordingly, a final remedy amount has not yet been formally liquidated by the Board.

11 a. Upon the NLRB's review of data provided by the discriminatees and
 12 applying the aforementioned standard NLRB practices, procedures, and legal precedent, Region 31
 13 has estimated figures of the make whole remedies owed to each of the individual discriminatees,
 14 which is summarized in **Exhibit D**. Assuming that Region 31 prevails in this matter, it is
 15 estimated that, as of December 31, 2022, the Debtor's total liability amounts to \$962,633.76. In
 16 preparing Exhibit C, Region 31 made the following considerations:

17 i. The period for the make whole remedy owed begins on the
 18 discriminatees' respective discharge dates and continues to accrue until the Debtor makes a valid
 19 offer of reinstatement/instatement to each discriminatee or there is some other valid tolling event.

20 ii. An appropriate measure of gross backpay owed to the discriminatees
 21 is the average earnings they would have earned if they had not been unlawfully discharged by the
 22 Debtor. Section 10540.2 of the NLRB Casehandling Manual Part 3, Compliance Proceedings
 23 (Compliance Manual), Formula One was used to make this determination. Gross backpay is
 24 computed on a calendar quarterly basis and the backpay amounts owed are rounded to the whole
 25 dollar or cent as appropriate.

26 iii. The discriminatees' respective quarterly net backpay amount is the
 27 difference between their respective calendar quarterly gross backpay amount and their calendar
 28

1 quarterly interim earnings. The discriminatees' respective interim earnings are those quarterly
2 earnings they received from employers during the backpay period.

3 iv. The discriminatees are entitled to be made whole for any interim
4 expenses incurred, which they would not have otherwise incurred if they remained employed by
5 the Debtor. These expenses include, but are not limited to, search-for-work and interim
6 employment expenses.

7 v. The total claims entitled to a fourth priority pursuant to 11 U.S.C. §
8 507(a)(4), are those claims accrued in the 180 days prior to the Debtor filing its petition, up to the
9 maximum amount per employee of \$15,150.00. The estimated total amount entitled to fourth
10 priority is \$253,060.00. All remaining amounts set forth in Exhibit C are general unsecured claims.

11 8. The Board's Proof of Claim will be amended at a later date, with updated figures, if
12 and when Region 31 reaches settlement or prevails in litigation in the Board's administrative
13 proceeding.

14 9. The NLRB is not seeking immediate payment; however, in the event liability is
15 found by the Board, or the NLRB General Counsel and the Debtor settle the matter, Region 31 will
16 liquidate the amount owed and seek payment at that time.

17
18 In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
19 and correct to the best of my knowledge and belief.

20
21 Executed at Los Angeles, California, this 6th day of January 2023.

22
23 

24 _____
25 Kristen L. Scott
26 Compliance Officer
27 National Labor Relations Board
28

Exhibit A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

**21ST CENTURY VALET PARKING, LLC
d/b/a STAR GARDEN**

Employer

and

Case 31-RC-301557

ACTORS' EQUITY ASSOCIATION¹

Petitioner

DECISION AND DIRECTION OF ELECTION

On August 17, 2022, Actors' Equity Association (Petitioner) filed a representation petition (Petition) under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent all Strippers, Dancers, and Entertainers employed by 21st Century Valet Parking, LLC d/b/a Star Garden (Employer) at its bar located at 6630 Lankershim Boulevard, North Hollywood, CA 91606.²

On September 9 and 15, 2022, a hearing was held via videoconference before a Hearing Officer of the National Labor Relations Board (the Board). The parties were provided the opportunity to call, examine, and cross-examine witnesses, to introduce into the record evidence of the significant facts that support their contentions, and to orally argue their respective positions and submit post-hearing briefs. Both parties timely submitted post-hearing briefs.³

The only issues litigated at the hearing and to be decided in this decision are whether the Employer meets the National Labor Relations Board's (the Board) discretionary jurisdictional standard for live adult entertainment venues and whether the Employer is engaged in interstate commerce at a level sufficient to establish statutory jurisdiction. The Employer contends that it does not meet the Board's jurisdictional standards because it will not have the necessary \$500,000 in gross revenues and its operations do not substantially affect interstate commerce. The Petitioner disagrees, contending that the Employer's own records show that it meets the

¹ At the hearing, the parties made a joint motion to amend the Petition and other formal documents to correct the name of the parties as captioned herein, and I approved that motion.

² Although the parties reached a stipulation on the appropriate unit description, they disagree as to how many employees are included in the unit. That issue, and the eligibility of voters, is not at issue in this pre-election hearing. There is much conflicting testimony between the witnesses, which I note throughout.

³ After the filing of the post-hearing briefs, Petitioner filed a Motion to Strike Portions of the Employer's Brief. The Employer subsequently filed an Opposition to Petitioner's Motion to Strike and a Motion to Strike.

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\$500,000 gross revenue threshold and that it is engaged in interstate commerce at a level sufficient to establish statutory jurisdiction.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. As explained below, based on the record and relevant Board law, I find that the Employer meets the Board's discretionary jurisdictional standard for live adult entertainment venues and is engaged in interstate commerce at a level sufficient to establish statutory jurisdiction. Accordingly, I shall direct a mail-ballot election in the stipulated unit.

I. FACTS

a. Overview of Star Garden's Operations and Offerings⁴

The Employer, also referred to herein as Star Garden, is a California limited liability corporation (LLC) that operates a topless bar in North Hollywood, California. The LLC commenced operations in early October 2021 and Stepan Kazaryan (Kazaryan) is the sole and managing member of the LLC. Star Garden is open seven days a week, from 6:00 p.m. until 2:00 a.m.

Star Garden includes a stage, where dancers/entertainers perform, and a full-service bar. Kazaryan testified that Star Garden's maximum capacity is approximately 55 people. In addition to dancers/entertainers, the Employer employs a disc jockey (DJ) and a bartender. Since the early part of 2022, Star Garden has maintained timecards for its employees, which are kept at Star Garden.⁵ Star Garden does not employ security guards; rather, it contracts with a private security company to provide those services.⁶

Star Garden's revenue is generated primarily through dances and liquor sales, and it is generated substantially by credit card purchases of customers. Star Garden generates some sales in cash, which is kept in a safe before being deposited into the Bank of America account. With

⁴ The facts are taken from the testimonial and documentary evidence introduced at the hearing. The Employer called Stepan Kazaryan as its witness and the Petitioner called a dancer who performed at Star Garden ("dancer") as its witness. Since it is the Board's position that credibility determinations are not made in pre-election R case hearings, I attempt to note where the testimony is disputed and/or where it is or is not corroborated with documentary evidence.

⁵ No timecards were submitted into the record.

⁶ There is no documentary evidence reflecting a contract between the Employer and a private security company, but Kazaryan provided some testimony regarding the relationship with the security guard company.

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respect to liquor sales, Star Garden's liquor license permits it to sell beer,⁷ wine,⁸ champagne,⁹ soju,¹⁰ and wine-based tequila and vodka.¹¹ Star Garden does not sell hard alcohol. Kazaryan testified that he works with a beer company and local distributors.¹² Star Garden does not charge a cover fee to enter the bar, but customers must buy at least one drink.

With respect to dance sales, the testimonial evidence reflects that the price of a one-song lap dance costs \$30, a two-song lap dance costs \$40, and a 15-minute VIP session costs \$100. There is dispute among the witnesses regarding how and when the lap dances are recorded. The dancer testified that payment for each lap dance is processed at the bar by the bartender or manager before the dance begins, and that each dance is tracked in a log by the bartender or manager on duty. The dancer described the log as being a piece of paper printed with a grid attached to a clipboard kept at the bar, with each dancer's name listed on one side. The dancer testified that the type of lap dance purchased is filled into the corresponding grid by the bartender or manager on duty. Kazaryan, on the other hand, denies the existence of such a log. He testified that they, the dancers and either he or whoever is on the floor, mentally keep track of the number of dances performed each night. Kazaryan further testified that when it comes time for payroll twice a month, the dancers meet with them to do payroll and the dancers are not required to furnish any proof as to the number of dances they are reporting they performed.¹³

In addition to liquor and dance sales, Star Garden sells bottles of water and fountain soda.¹⁴ There is also a vending machine in Star Garden that sells basic snacks such as chips and candy, but it has not been working for many months. The witnesses dispute whether the vending machine also offers cigarettes for purchase.¹⁵ The witnesses further dispute whether Star Garden offers customers food products for purchase, such as nachos, chips, ramen noodles, and

⁷ Available beer includes, but is not limited to, Bud Light, Corona, and Modelo. Star Garden also offers draft beer. Beer is at least \$10 or \$26 for a pitcher. The dancer testified that a stein of beer was \$14.

⁸ Kazaryan could not recall the types or brands of wine available for customers but testified that wine is \$14 a glass.

⁹ Kazaryan could not recall the types of champagne available for customers but testified champagne is \$14 a glass and a bottle is between \$80-\$100. Mimosas are also available for \$16.

¹⁰ Kazaryan testified that a shot of soju costs \$10.

¹¹ Kazaryan testified that shots of the wine-based tequila and vodka cost \$10.

¹² Kazaryan could not recall any details or information about the relationship with the distributor and the Employer did not introduce any documents reflecting its relationship with any beer companies or local distributors.

¹³ Kazaryan testified that the revenues for the lap dances are accurately reflected in the provided profit and loss statements.

¹⁴ Bottles of water cost between \$6 to \$8 and fountain soda, such as diet coke, is \$6.

¹⁵ Wicked testified that since January 2022, cigarettes were available in the vending machine. Kazaryan testified that the vending machine has never offered cigarettes. There is no documentary evidence reflecting what is offered in the vending machine, nor is there evidence reflecting how money is generated through vending machine sales.

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microwaveable mac-n-cheese.¹⁶ Star Garden also has an ATM machine, which generates some revenue.¹⁷ Star Garden does not sell merchandise.

b. Star Garden's Documented Revenue from October 2021 to July 31, 2022

The Employer submitted documentary evidence reflecting its revenues from October 2021 through July 31, 2022. Specifically, Employer Exhibit 1 contains the following: (1) bank statements from the Employer's Bank of America account for the months of October 2021 to July 2022;¹⁸ (2) promissory notes showing loans from Kazaryan to Star Garden in June 2022, July 2022, and August 2022;¹⁹ and (3) Statements of Income (also referred to as Profit and Loss Statements) prepared by Kazaryan for the following time periods: October 2021 - December 2021; January 1, 2022 – April 30, 2022; and May 1, 2022 – July 31, 2022.²⁰ Employer Exhibit 1 also contains an affidavit executed by Kazaryan, with accompanying Exhibits A and B.²¹

Kazaryan testified that all the information contained in the documents included in Employer Exhibit #1 is true and correct. However, as discussed below and as noted by Petitioner in its post-hearing brief, Employer Exhibit 1 contains two sets of Statements of Income, reflecting different sales amounts for the same periods of time.²²

i. Statement of Income for October 2021 – December 31, 2021

Employer Exhibit 1 contains two versions of the Employer's Statement of Income/Profit and Loss Statement for October 2021 through December 31, 2021. On direct examination, Kazaryan testified that the profit and loss statement reflecting approximately \$150,000 in total revenue for this time period was accurate. Counsel specifically identified the profit and loss statement marked with Bates stamp number Star 127 with a gross sales figure of \$150,000 to Kazaryan, and Kazaryan testified that was a true and correct figure. Kazaryan further testified that he prepared that profit and loss statement based upon his understanding and review of the

¹⁶ According to the dancer, prior to March 2022, Star Garden offered nachos for \$3.50, chips for \$1.50, ramen noodles for \$2, and microwaveable mac-and-cheese for \$2. The dancer testified that the nachos were very popular. Kazaryan testified that Star Garden has not offered nachos to customers but had, on occasion, given out free mac-and-cheese to customers. He also testified that ramen is available only for staff.

¹⁷ Kazaryan could not recall the fee customers pay to use the ATM and there is no documentary evidence regarding the revenue specifically generated by the ATM; rather, Kazaryan testified that the money made from the ATM is included in the sales reflected by the bank statements and the profit and loss statements.

¹⁸ Employer Exhibit 1, pages 4 – 123 of the pdf, identified with Bates stamps STAR0001 – STAR0120.

¹⁹ Employer Exhibit 1, pages 124 – 129 of the pdf, identified with Bates stamps STAR0121 – STAR0126; and STAR 0143-0144.

²⁰ Employer Exhibit 1, pages 130 – 131 of the pdf, identified with Bates stamps STAR0127 – STAR0129.

²¹ Employer Exhibit 1, pages 132 – 148 of the pdf, identified with Bates stamps STAR0130 – STAR0145.

²² Kazaryan does not explain this discrepancy and the Employer did not address it in its post-hearing brief.

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ordinary business income that Star Garden received in that time period. The document identified by counsel, and confirmed by Kazaryan, reflects total sales of \$150,522 for this time period.

Based on Kazaryan's direct testimony, I rely on the profit and loss statement reflecting a total revenue of \$150,522 for this time period. I do not rely on the profit and loss statement attached as Exhibit A to Kazaryan's sworn declaration in Employer's Exhibit 1, which reflects total revenue of \$78,289.09 for this time period because at the hearing he only attested to the accuracy of the profit and loss statement reflecting revenue of \$150,522.²³

ii. *Statement of Income for January 1, 2022 – April 30, 2022*

Employer Exhibit 1 similarly contains two versions of the Employer's Statement of Income/Profit and Loss Statement for January 1, 2022 through April 30, 2022. On direct examination, Kazaryan testified that the profit and loss statement reflecting \$216,347 in total sales for this time period was accurate. Counsel specifically identified the profit and loss statement marked with the Bates stamp number Star 128 with gross sales figure of \$216,347 to Kazaryan, and Kazaryan testified that it was a true and correct figure. Kazaryan further testified that he prepared that profit and loss statement based upon his understanding and review of the ordinary business income that Star Garden received in that time period. The document identified by counsel, and confirmed by Kazaryan, reflects total sales of \$216,347 for this time period.

Based on Kazaryan's direct testimony, I rely on the profit and loss statement reflecting a total revenue of \$216,347 for this time period. I do not rely on the profit and loss statement attached as Exhibit A to Kazaryan's sworn declaration in Employer's Exhibit 1, which reflects total sales of \$172,282 for this time period.²⁴

iii. *Statement of Income for May 1, 2022 – July 31, 2022*

Employer Exhibit 1 likewise contains two versions of the Employer's Statement of Income/Profit and Loss Statement for May 1, 2022 through July 31, 2022. Unlike the prior periods, however, the numbers reflected on these versions are identical. On direct examination, Kazaryan testified that the profit and loss statement reflecting \$57,718 in total sales for that time period was accurate. Counsel specifically identified the profit and loss statement marked with the Bates stamp number Star 129, and Kazaryan testified that it was a true and correct figure. Kazaryan further testified that he prepared that profit and loss statement based upon his understanding and review of the ordinary business income that Star Garden received in that time period.

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²³ Employer Exhibit 1, Bates stamp STAR0133.

²⁴ Employer Exhibit 1, Bates stamp STAR0134.

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iv. *August 1, 2022 – September 30, 2022*

Kazaryan testified that he projected the total revenue for Star Garden to be \$44,000 total for August and September 2022.²⁵ Kazaryan testified that his projected decline in sales for these two months was a reasonable forecast of sales due to activity taking place on the sidewalk in front of Star Garden. Kazaryan refers to “disruptors” engaging in activity on the sidewalk outside his business, including, but not limited to, what he describes as blocking the driveway, blocking the exit and entrance, accosting customers, and harassing customers. He testified that what the disruptors are doing is absolutely having an adverse effect on his business and that any reasonable person would know that business is down because of the disruption that is going on out on the sidewalk.

c. Activity/Conduct Taking Place in Front of Star Garden

There is much discussion regarding the activity/conduct taking place in front of Star Garden in the parties’ post-hearing briefs, the Petitioner’s Motion to Strike, and the Employer’s Opposition to the Motion to Strike and Motion to Strike. The Petitioner refers to the activity/conduct as lawful picketing and the Employer refers to it as unlawful activity and disruption. I do not rely on either parties’ characterizations of the activity/conduct, nor do I rely on any documentary evidence regarding the activity/conduct that was not admitted into the record at the hearing.²⁶ I solely rely on the fact that the parties do not dispute that some sort of activity/conduct is taking place in front of the Employer’s establishment, that it is has been taking place since at least April 2022, and that it is on-going.²⁷

d. Interstate Commerce

The Employer stipulated that since October 2021 through September 9, 2022,²⁸ in conducting its operations, it has purchased and received at its Burbank, California facility, telephone services valued in excess of \$2,700 from a company located outside the State of California.²⁹

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II. ANALYSIS

²⁵ Even though the hearing took place in September 2022, the Employer did not submit any documentary evidence reflecting revenue earned in August 2022.

²⁶ Given that I do not rely on either party’s description of the activity/conduct, each party’s request to strike those portions of the respective briefs is moot. Even if I were to admit the evidence attached as Exhibit A to the Employer’s post-hearing brief, as it requests in its Motion, I would not rely on those documents because there is no testimony authenticating the documents and/or explaining the documents.

²⁷ The parties stipulated that there are five related unfair labor practice charges pending in Region 31 in Case Nos. 31-CA-291825, 31-CA-292239, 31-CA-292575, 31-CA-293098 and 31-CA-293599.

²⁸ This is the date when the Employer entered into this stipulation.

²⁹ Board Exhibit 2, paragraph 8.

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a. The Board's Legal Standard

The Board's jurisdiction extends to enterprises whose operations affect interstate commerce.³⁰ That is, the Board's statutory jurisdiction applies when an employer's business in interstate commerce is more than "de minimis." *NLRB v. Fainblatt*, 306 U.S. 601, 606 (1939).

In the exercise of administrative discretion, the Board has limited its assertion of jurisdiction to employers that meet certain monetary standards, which are based on the character of the business. Because the Board's discretionary standards are self-imposed, rather than statutorily required, the Board is permitted to disregard those standards. *NLRB v. Erlich's 814 Inc.*, 577 F.2d 68 (8th Cir. 1978).

The Board applies a \$500,000 gross revenues standard for discretionary jurisdiction over adult entertainment venues. *Nolan Enterprises d/b/a Centerfold Club*, 370 NLRB No. 2 (2020). In general, any preceding yearly period proximate to the filing of a representation petition can be utilized in computing gross revenues, such as the most recent calendar year, fiscal year, or immediately preceding 12-month period. *Jos. McSweeney & Sons, Inc.*, 119 NLRB 1399 (1958). In asserting jurisdiction over employers operating for less than one year, the Board computes the total revenues earned in the partial year, and projects that amount forward through a 12-month period. *See, e.g., Sequim Lumber & Supply Co.*, 123 NLRB 1097 (1959) (5-month period used to project year's business); *Marston Corp.*, (1958) 120 NLRB 76 (4.5 month period used); *Carpenter Baking Co.*, 112 NLRB 288 (1955) (20-week period used to project annual volume of business); *Plumbers Local 106 (Columbia-Southern Chemical)*, 110 NLRB 206 (1954) (2 months); *American Television*, 110 NLRB 164 (1955) (1 week).

b. Position of the Parties

The Employer contends that the record evidence makes clear that it does not come close to the \$500,000 threshold. It contends that from October 2021 through September 30, 2022, its total expected sales for the year are only \$352,829.09.³¹ In addition, the Employer contends that there is no record evidence showing that Star Garden's operations substantially affect interstate commerce.

³⁰ Section 2(6) of the Act defines commerce as "trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country."

Section 2(7) of the Act defines affecting commerce as "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

³¹ The Employer appears to have reached this number by adding the total sales from the Statements of Income reflected on STAR0133, STAR0134, and STAR0135 (\$78,289.09 + \$172,282 + \$57,718 = 308,286.09) with the projected sales for August and September 2022 (\$44,000).

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The Petitioner contends that the Employer's documents show that it meets the Board's jurisdiction threshold. It contends that the Statements of Income and Bank statements provided by the Employer show that between October 2021 and July 2022, Star Garden had \$424,587 in total sales.³² Projected over a twelve-month period, Star Garden's sales would be \$509,504.40, putting it squarely within the Board's jurisdiction. The Petitioner further contends that any attempt by the Employer to estimate the revenue for August 2022 should not be considered because the Employer did not submit any documentary evidence for that time period, which would be in their possession, and thus any estimate is unsupported by record evidence.

The Petitioner also argues that the stipulation providing that the Employer purchased and received at its Burbank, California facility, telephone services valued in excess of \$2,700 from a company located outside the State of California is more than sufficient to satisfy the Board's *de minimis* amount of interstate commerce.

c. Analysis

The credited documentary evidence and related testimony show that for the 10-month period from October 2021 through July 2022, the Employer had \$424,587 in total revenue.³³ That amount, projected through the 12-month period ending September 2022, results in a total projected revenue of \$509,504.40.³⁴ This projection calculation is consistent with Board law regarding projections for employers operating for less than one year. *See, e.g., Sequim Lumber & Supply Co.*, 123 NLRB 1097 (1959) (5-month period used to project year's business); *Marston Corp.*, (1958) 120 NLRB 76 (4.5 month period used); *Carpenter Baking Co.*, 112 NLRB 288 (1955) (20-week period used to project annual volume of business); *Plumbers Local 106 (Columbia-Southern Chemical)*, 110 NLRB 206 (1954) (2 months); *American Television*, 110 NLRB 164 (1955) (1 week). The Employer cites to no Board cases, and I have found none, where the Board will project revenues for the remainder of the year based solely on the last few months of a partial year where an employer has suffered a slowdown. I therefore find that the Employer meets the Board's \$500,000 gross revenue standard for adult entertainment venues.

I also find that the Employer has engaged in sufficient interstate commerce to establish statutory jurisdiction, based on its stipulation that since October 2021 through September 9, 2022, in conducting its operations, it has purchased and received at its Burbank, California facility, telephone services valued in excess of \$2,700 from a company located outside the State of California. *See, e.g., Pet Inn's Grooming Shoppe*, 220 NLRB 828, 829 (1975) (finding \$1,500 of purchases not *de minimis* but sufficient to affect commerce within the meaning of Section 2(7)

³² Petitioner highlights the fact that Employer's Exhibit 1 includes two *different* Statement of Income totals for the same time period and contends that if these Statements are to be considered, the higher sales numbers should be considered.

³³ STAR0127 reflecting \$150,522 in total sales for October through December 2021; STAR0128 reflecting \$216,347 in total sales for January 1, 2022 through April 30, 2022; and STAR0129 reflecting \$57,718 in total sales for May 1, 2022 through July 31, 2022.

³⁴ $\$424,587/10 = \$42,458.70 \times 2 = \$84,917.40 + \$424,587 = \$509,504.40$.

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of the Act); *Marty Levitt*, 171 NLRB 739, 739 (1968) (finding \$1,500 more than the amount which the courts have characterized as *de minimis*); *Somerset Manor Inc.*, 170 NLRB 1647 (1968) (holding \$1,800 more than *de minimis*); *Aurora City Lines, Inc.*, 130 NLRB 1137, 1138 (1961), enf'd 299 F.2d 229, 231 (7th Cir. 1962) (affirming \$2,000 of indirect inflow is more than *de minimis*).³⁵

Accordingly, I find that the Employer meets the Board's discretionary and jurisdictional standards and is, therefore, subject to the Board's jurisdiction.

d. The Impact of the Activity/Conduct Taking Place Outside Star Garden

Alternatively, the Petitioner argues that the proper time period to use to project Star Garden's annual gross revenue is October 2021 through March 2022, approximately when the activity/conduct started outside Star Garden. The Employer, through its Opposition to the Motion to Strike and related Motion to Strike, vehemently objects to the Petitioner's classification of the conduct going on outside the establishment as protected activity, thereby opposing this method of projecting gross revenues. On the other hand, as discussed above, it argues that the decline in revenue since May 2022 supports Kazaryan's projection of sales for August and September 2022, which would make Star Garden's total revenue less than \$500,000.

As stated above, I do not rely on either parties' characterizations of the activity/conduct taking place outside the Star Garden. However, it is undisputed that some sort of activity/conduct is taking place in front of the Employer's establishment, it is has been taking place since at least April 2022, and it is ongoing. Moreover, Kazaryan clearly testified that the conduct taking place has had an impact on Star Garden's business.

The Board has long held that a drop in volume of business as a result of picketing or other conduct cannot be taken into consideration as a factor to deny the Board's jurisdiction. See *Hickory Farms of Ohio*, 180 NLRB 755 (1970); *Idaho State District Court (Cox's Food Center)*, 164 NLRB 95 (1967); *Fairmount Construction Co.*, 95 NLRB 969, 971 (1951). In *Hickory Farms of Ohio*, the record evidence showed that there was ongoing picketing and the Board therefore found that the question to be determined was "how much annual income would the Employer have derived from his operations but for the picketing?" 180 NLRB at 755.³⁶ Similarly, in *Fairmount Construction Co.*, 95 NLRB 969, 971 (1951), the record showed that the operations of the Fairmount project were severely curtailed by a strike which became the subject of unfair labor practice charges. The Board stated the following:

If, absent the occurrence of this strike, the operations of Fairmount would have met the requirements set forth by the Board for asserting jurisdiction, a dismissal for

³⁵ Given that I find the stipulated amount to be more than *de minimis*, I do not rely on any of Petitioner's requests that I take administrative notice regarding this issue. As a result, the Employer's motion to strike portions of the Petitioner's brief regarding these requests for administrative notice is moot.

³⁶ The Board's decision in *Hickory Farms* does not refer to the picketing as "protected picketing" nor does it refer to the picketing as "lawful picketing" or "unlawful picketing."

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want of jurisdiction would be self-defeating. In that instance the Board would be deprived of jurisdiction to adjudicate and correct an alleged unfair labor practice by the very conduct which is the subject of the complaint. It thus becomes essential to determine, not alone what the operations of Fairmount were during the period in question, but what those operations would have been but for the strike.

Id. at 971.³⁷ Similarly, in *Idaho State District Court (Cox's Food Center)*, 164 NLRB 95 (1967), the Board issued an advisory opinion stating that the drop in the Employer's annual volume of business as a result of picketing "could not be taken into consideration as a factor in defeasance of the jurisdiction of the NLRB."³⁸

Assuming, *arguendo*, that the calculated projected sales set forth in Section II.c above were insufficient to establish jurisdiction, there is nevertheless sufficient record evidence that the activity/conduct taking place in front of the Star Garden is an unusual intervening event and that the Employer's operations have been curtailed by the activity/conduct. Therefore, I would find that it would be appropriate to project sales based on the period before the activity/conduct started. This determination does not require that I find the activity/conduct to be protected, lawful, or unlawful. Applying this theory, the Employer's documents reflect \$366,869 in total sales for the 7-month period from October 2021 through April 30, 2022.³⁹ Projecting the annual sales based on this 7-month period results in \$628,918.29 of annual sales, which is more than the \$500,000 threshold required for adult entertainment venues.⁴⁰ As such, I would similarly find that the Employer meets the Board's discretionary standard.

III. CONCLUSIONS AND FINDINGS

Based upon the record and in accordance with the discussion above, I find that the Employer meets the Board's discretionary jurisdictional standard for live adult entertainment venues and is engaged in interstate commerce at a level sufficient to establish statutory jurisdiction. Accordingly, based on the foregoing and the record as a whole, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

³⁷ Similarly, the Board's language does not refer to the strike as being protected, lawful or unlawful, and it refers to an "alleged" unfair labor practice.

³⁸ The Board's language does not refer to the picketing as "protected picketing" nor does it refer to the picketing as "lawful picketing" or "unlawful picketing."

³⁹ STAR0127 reflecting \$150,522 in total sales for October through December 2021 and STAR0128 reflecting \$216,347 in total sales for January 1, 2022 through April 30, 2022.

⁴⁰ $(\$150,522 + \$216,347) / 7 = \$52,409.86/\text{month}$; $\$52,409.86 \times 5 = \$262,049.29$; $\$366,869 + \$262,049.29 = \$628,918.29$.

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2. The Employer is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴¹
3. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. The parties stipulated and I find that there is no collective-bargaining agreement covering any of the employees in the petitioned-for unit, and there is no contract bar, or any other bar, to this proceeding.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The parties stipulated and I find that the following employees of the Employer constitute an appropriate unit (the Unit) for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time Dancers/Entertainers and DJs employed by the Employer at 6630 Lankershim Blvd., N. Hollywood, CA.

Excluded: All other employees, confidential employees, managerial employees, guards, and supervisors as defined by the Act.

Accordingly, for the reasons detailed above and consistent with the parties' proposal regarding the method of election, I will direct a mail-ballot election in the Unit above.⁴²

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the Unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **ACTORS' EQUITY ASSOCIATION**.

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⁴¹ The Employer is a California limited liability corporation with its principal place of business located in Burbank, California, that operates a bar in N. Hollywood, CA where it is engaged in providing live adult entertainment. As detailed above, based on a projection of its operations since about October 2021, Respondent will annually derive gross revenues in excess of \$500,000. In addition, since October 2021 through September 9, 2022, the Employer, in conducting its operations, has purchased and received at its Burbank, California facility telephone services valued in excess of \$2,700 from a company located outside the State of California.

⁴² Thus, to the extent that the Employer's post-hearing brief includes a request/motion to dismiss the Petition, that motion is denied.

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A. Election Details

As stipulated and proposed by the parties, the election will be conducted by mail.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At **5:00 p.m. on Friday, October 14, 2022**, ballots will be mailed to voters from the National Labor Relations Board, Region 31. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Monday, October 24, 2022**, as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations Board by either calling the Region 31 Office at (310) 235-7352 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

The returned ballots must be received by the Region 31 office by **Friday, November 4, 2022**. All ballots will be commingled and counted by the Region 31 office on **Monday, November 7, 2022 at 2:00 p.m.** In order to be valid and counted, the returned ballots must be received by the Region 31 office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which will be held by videoconference. A meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count. Upon conclusion of the count, a tally of ballots will be prepared and immediately made available to the parties by email.

B. Voting Eligibility

Eligible to vote are those in the Unit who were employed during the payroll period ending **September 26, 2022**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the Unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote by mail as described above.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board's designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

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C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this Decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. **The Employer must also include, in a separate section of that list, the same information for the approximately 19 employees who are the subject of pending unfair labor practice proceedings alleging their unlawful discharge or lockout.** See unfair labor practice charges 31-CA-291825, 31-CA-292239, 31-CA-292575, 31-CA-293098, and 31-CA-303537. These employees will vote subject to challenge.⁴³

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Tuesday, October 11, 2022**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this Decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

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⁴³ The Board allows terminated employees with unfair labor practice charges, grievances, or other litigation pending at the time of the election to cast challenged ballots. See *Curtis Industries, Inc.*, 310 NLRB 1212, 1212-1213 (1993) ("[I]t is well established that individuals may vote by challenged ballot when their eligibility cannot be determined on the existing record."); see also *Pacific Tile & Porcelain Co.*, 137 NLRB 1358, 1365-1367 (1962).

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D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the Unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the Unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees, as well as the employees who are the subject of the pending unfair labor practice charges referenced above. **The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election.** For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this Decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain

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the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: October 6, 2022



Mori Rubin
Regional Director
National Labor Relations Board, Region 31
11500 W. Olympic Blvd., Suite 600
Los Angeles, CA 90064-1753

Exhibit B

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

**21ST CENTURY VALET PARKING LLC D/B/A
STAR GARDEN**

and

STRIPPERS UNITED INC.

**Cases 31-CA-291825
31-CA-292239
31-CA-293098
31-CA-293599
31-CA-303537**

and

Case 31-CA-292575

AN INDIVIDUAL

**ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT
AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 31-CA-291825, 31-CA-292239, 31-CA-292575, 31-CA-293098, 31-CA-293599, and 31-CA-303537, which are based on a charge filed by an individual (Case 31-CA-292575), and charges filed by Strippers United, referred to herein collectively as Charging Parties, against Star Garden Enterprise, d/b/a of 21st Century Valet Parking, LLC (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1. The charges in the above cases were filed by the respective Charging Parties, as set forth in the following table, and served upon Respondent on the dates indicated by U.S. Mail:

Case Number	Amendment	Charging Party	Date Filed	Date Served
31-CA-291825	n/a	An Individual	3/7/2022	3/8/2022

31-CA-291825	First Amended	Strippers United	9/19/2022	9/20/2022
31-CA-292239	n/a	An Individual	3/14/2022	3/15/2022
31-CA-292239	First Amended	Strippers United	9/19/2022	9/20/2022m
31-CA-292575	n/a	An Individual	3/21/2022	3/21/2022
31-CA-293098	n/a	An Individual	3/28/2022	3/29/2022
31-CA-293098	First Amended	Strippers United	9/19/2022	9/20/2022
31-CA-293599	n/a	Strippers United	4/4/2022	4/6/2022
31-CA-303537	n/a	Strippers United	9/15/2022	9/16/2022

2. (a) At all material times, Respondent has been a limited liability company with an office and place of business in Los Angeles, California (Respondent's facility) where it has been engaged in operating an adult entertainment venue selling drinks and providing services to guests.

(b) In conducting its operations since about October 2021 through July 2022, Respondent has derived gross revenues of \$424,587, and on a projected basis for the 12-month period commencing about October 2021, Respondent will annually derive gross revenues in excess of \$500,000.

(c) During the period of time described above in paragraph 2(b), Respondent purchased and received at its Los Angeles, California facility goods and services valued in excess of \$2,700 directly from points outside the State of California.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and/or agents of Respondent within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)

5. At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)

6. (a) Concerns regarding employee safety in the workplace are issues of vital importance to employees and implicate significant terms and conditions of employment.

(b) Raising concerns about employee safety in the workplace is conduct that is inherently concerted under Act.

7. (a) About (b) (6), (b) (7)(C), 2021, Respondent's employee known by the alias (b) (6), (b) (7)(C) engaged in concerted activities for the purpose of mutual aid and protection by, inter alia, raising concerns about employee safety in the workplace and Respondent's policies regarding unruly customers.

(b) About (b) (6), (b) (7)(C), 2021, Respondent discharged the employee known by the alias (b) (6), (b) (7)(C)

(c) Respondent engaged in the conduct described above in paragraph 7(b) because the named employee engaged in the conduct described above in paragraph 7(a), and to discourage other employees from engaging in these or other concerted activities.

(d) Respondent engaged in the conduct described above in paragraph 7(b) to prevent future concerted activities by (b) (6), (b) (7)(C) and other employees.

8. (a) About (b) (6), (b) (7)(C), 2022, Respondent's employee known by the alias (b) (6), (b) (7)(C) engaged in concerted activities for the purpose of mutual aid and protection by, inter alia, raising concerns about employee safety in the workplace and Respondent's policies toward customers.

(b) About (b) (6), (b) (7)(C), 2022, Respondent discharged the employee known by the alias (b) (6), (b) (7)(C)

(c) Respondent engaged in the conduct described above in paragraph 8(b) because the named employee engaged in the conduct described above in paragraph 8(a), and to discourage other employees from engaging in these or other concerted activities.

(d) Respondent engaged in the conduct described above in paragraph 8(b) to prevent future concerted activities by (b) (6), (b) (7)(C) and other employees.

9. (a) About (b) (6), (b) (7)(C), 2022, Respondent's employee known by the alias (b) (6), (b) (7)(C) engaged in concerted activities for the purpose of mutual aid and protection by, inter alia, raising concerns about employee safety in the workplace and Respondent's enforcement of its rules.

(b) About (b) (6), (b) (7)(C), 2022, Respondent discharged the employee known by the alias (b) (6), (b) (7)(C)

(c) Respondent engaged in the conduct described above in paragraph 9(b) because the named employee engaged in the conduct described above in paragraph 9(a), and to discourage other employees from engaging in these or other concerted activities.

(d) Respondent engaged in the conduct described above in paragraph 9(b) to prevent future concerted activities by (b) (6), (b) (7)(C) and other employees.

10. (a) About (b) (6), (b) (7)(C), 2022, Respondent's employees, known by the following aliases, (b) (6), (b) (7)(C), engaged in concerted activities for the purpose of mutual aid and protection by signing and/or delivering a petition to Respondent which demanded changes to Respondent's workplace safety practices and the reinstatement of employees (b) (6), (b) (7)(C).

(b) About (b) (6), (b) (7)(C), 2022, Respondent's employees, known by the following aliases, (b) (6), (b) (7)(C), engaged in concerted activities for mutual aid and protection by withholding services from Respondent because Respondent refused to respond to their concerns about its workplace safety practices.

(c) About (b) (6), (b) (7)(C), 2022, Respondent's employees, known by the following aliases, (b) (6), (b) (7)(C), engaged in concerted activities for the purpose of mutual aid and protection by conducting an informational picket outside of Respondent's facility.

(d) About (b) (6), (b) (7)(C), 2022, Respondent locked out and/or discharged Respondent's employees, known by the following aliases, (b) (6), (b) (7)(C), (b) (6), (b) (7)(C).

(e) Respondent engaged in the conduct described in paragraph 10(d) because the named employees engaged in the conduct described in paragraphs 10(a), 10(b), and 10(c), and to discourage employees from engaging in these or other concerted activities.

11. About [REDACTED], 2022, Respondent, by [REDACTED], at the entrance to Respondent's facility, engaged in surveillance by recording video of employees engaged in concerted activities.

12. By the conduct described above in paragraphs 7(b)-(d), 8(b)-(d), 9(b)-(d), 10(d) and (e), and 11, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

13. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above in paragraphs 7(b)-(d), 8(b)-(d), 9(b)-(d), 10(d) and (e), and 11, the General Counsel seeks an Order requiring Respondent to:

- i. At a meeting or meetings scheduled to ensure the widest possible attendance, by a responsible management official, read the notice to the employees, on worktime in the presence of a Board agent. Alternatively, the General Counsel seeks an order requiring that Respondent promptly have a Board agent read the notice to employees during worktime in the presence of a responsible management official;
- ii. Cease and desist from violating the Act in any other manner;
- iii. Make whole employees known by the aliases [REDACTED]
[REDACTED]

(b) (6), (b) (7)(C), including, but not limited to, reimbursement of direct and foreseeable consequential damages they incurred as a result of the Respondent's unlawful conduct;

- iv. Distribute, by text message, to its employees, supervisors and managers copies of the Notice to Employees;
- v. Post the Board's Notice to Employees for 120 days;
- vi. Post the Board's Explanation of Employee Rights Poster for one year to ensure that employees fully understand their rights under the Act; and
- vii. Conduct a training session for its employees and managers and supervisors on their rights and obligations under the National Labor Relations Act.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before December 20, 2022, or postmarked on or before December 19, 2022.** Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that

the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **March 7, 2023, 9:00am at 11500 W. Olympic Blvd., Suite 600, Los Angeles, CA 90064**, in an available hearing room or in a location or manner, including Zoom videoconferencing, otherwise ordered by the Administrative Law Judge, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-

4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: December 6, 2022

A handwritten signature in black ink that reads "Mori Rubin". The signature is written in a cursive, flowing style.

MORI RUBIN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 31
11500 W OLYMPIC BLVD
SUITE 600
Los Angeles, CA 90064-1753

Attachments

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 31-CA-291825

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

(b) (6), (b) (7)(C)

21st Century Valet Parking LLC d/b/a/ Star
Garden
6630 Lankershim Blvd.
North Hollywood, CA 91606

Jordan A. Palmer , Head of Legal Dept.
Strippers United Inc.
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(b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C)

UCLA School of Law, Labor and Economic
Justice Clinic
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Los Angeles, CA 90095

(b) (6), (b) (7)(C)

Strippers United
UCLA Law, Labor and Economic Justice
Clinic - El Centro
385 Charles E. Young Drive East, 1242 Law
Building
Los Angeles, CA 90095

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

Exhibit C

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

**21ST CENTURY VALET PARKING, LLC D/B/A
STAR GARDEN**

Employer

Case 31-RC-301557

and

ACTORS' EQUITY ASSOCIATION

Petitioner

and

STRIPPERS UNITED INC.

Union/Charging Party

Case 31-CA-291825

31-CA-292239

31-CA-293098

31-CA-293599

31-CA-303537

and

AN INDIVIDUAL

Case 31-CA-292575

**REPORT ON CHALLENGED BALLOTS,
ORDER CONSOLIDATING HEARING,
AND NOTICE OF HEARING**

Based on a petition filed on August 17, 2022 and pursuant to a Decision and Direction of Election, an election was conducted by mail beginning on October 14, 2022 to determine whether a unit of employees of 21st Century Valet Parking, LLC d/b/a Star Garden (the Employer) wish to be represented for purposes of collective bargaining by Actors' Equity Association (Petitioner). That voting unit consists of:

Included: All full-time and regular part-time Dancers/Entertainers and DJs employed by the Employer at 6630 Lankershim Blvd., N. Hollywood, CA.

Excluded: All other employees, confidential employees, managerial employees, guards, and supervisors as defined by the Act.

At the ballot count, the Employer challenged 18 out of the 19 ballots that were cast. The Region impounded the single unchallenged ballot to preserve the secrecy of the employee's vote, and no tally of ballots was prepared.

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THE CHALLENGED BALLOTS

A summary of the challenged ballots, the party who raised the challenge(s) and the basis for the challenges follows in the table below.¹ The challenged voters are named by their known aliases where possible, and where there is no known alias, they are identified by their first name only.

Voter Name	Challenging Party	Reason for Challenge
(b) (6), (b) (7)(C)	Employer	At the ballot count, the Employer contended this voter was never employed by the Employer. The Employer did not provide additional information in its subsequent position statement.
(b) (6), (b) (7)(C)	Employer	The Employer contends this voter was never employed, and had merely auditioned to work at the Employer's bar.
(b) (6), (b) (7)(C)	Employer	The Employer contends this voter was never employed, and had merely auditioned to work at the Employer's bar.
(b) (6), (b) (7)(C)	Employer	The Employer contends this voter was never employed, and had merely auditioned to work at the Employer's bar.
(b) (6), (b) (7)(C)	Employer	<p>The Board agent voided this ballot because the voter's name was printed on the return envelope, rather than signed.</p> <p>The Petitioner challenged the Board agent's void of the ballot, arguing it should be counted as a valid signature.</p> <p>The Employer contends this voter was never employed, and had merely auditioned to work at the Employer's bar.</p>
(b) (6), (b) (7)(C)	Employer	The Employer contends this voter was never employed, and had merely auditioned to work at the Employer's bar.

¹ Initially, the Board agent challenged all of these voters because they were not included on the voter list the Employer furnished to the Region and the Petitioner. However, the Employer ultimately challenged these voters on other bases, which explain their exclusion from the list, so the Board agent's challenge is no longer relevant.

[illegible]

On December 6, 2022, I issued a Consolidated Complaint (Complaint) and Notice of Hearing in Cases 31-CA-291825, et al., ("Complaint") alleging, *inter alia*, that the Employer violated Section 8(a)(1) of the National Labor Relations Act ("the Act") by discharging and/or locking out certain employees for having engaged in protected, concerted activities and to discourage other employees from engaging in those activities. The employees subject to the unfair labor practice allegations include all of the above individuals whose votes were challenged by the Employer. The Complaint alleges these unfair labor practices occurred between October 2021 and March 2022, prior to the election in this case.

The Petitioner contends that the voters whose ballots were challenged were employees of the Employer and because they were unlawfully discharged or locked out, they were eligible to vote in the election. The Employer contends these individuals were never its employees under the meaning of the Act and therefore they are not eligible to vote in an election. The Employer asserts that eight of the voters signed "Lessee Contracts/Declination of Employment Agreements," which rendered them independent contractors. The Employer claims that the remaining ten challenged voters only performed at the Employer's bar in auditions and were never employed.

The parties' positions demonstrate that a determination on the challenges is closely connected to the outcome of the unfair labor practice allegations. In other words, if the alleged discriminatees are ultimately found to have been employees under the Act and to have been unlawfully discharged, they will be eligible to vote. On the other hand, if they are found not to have been employees of the Employer, or if their discharges are found to be lawful, they would not be eligible to vote. In such cases, where determinative challenged voters are also involved in related unfair labor practice allegations or are the subject of unfair labor practice allegations, it is appropriate to consolidate the challenges with the complaint for hearing before an Administrative Law Judge. See *NLRB Casehandling Manual, Part Two, Representation Proceedings*, Section 11420.1.

CONCLUSION, ORDER AND NOTICE OF HEARING

I have concluded that the challenged ballots raise substantial and material issues of fact that can best be resolved by hearing. I have further concluded that the challenges are closely related to the unfair labor practices in the Complaint.

Accordingly, having duly considered the matter and deeming it necessary to effectuate the policies of the Act, and to avoid unnecessary cost or delay,

IT IS ORDERED, pursuant to Section 102.33 and 102.72 of the National Labor Relations Board's Rules and Regulations, that Case Nos. 31-RC-301557, 31-CA-291825, 31-CA-292239, 31-CA-293098, 31-CA-293599, 31-CA-303537, and 31-CA-292575 be consolidated for the purpose of hearing, ruling and decision by an Administrative Law Judge, and thereafter that Case No. 31-RC-301557 be transferred to and continued before the Board in Washington, D.C. and that the provisions of Section 102.46 and 102.69 of the Board's Rules and Regulations shall govern the filing of exceptions.

PLEASE TAKE NOTICE that on **March 7, 2023, 9:00 a.m. at 11500 West Olympic Blvd., Suite 600, Los Angeles, CA 90064**, in an available hearing room or in a location or manner, including Zoom videoconferencing, otherwise ordered by the Administrative Law

Judge, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, the parties to this proceeding will have the right to appear and present testimony regarding the issues involved herein. The procedures to be followed at the hearing are described in the attached Form NLRB-4866. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4388.

Dated: December 12, 2022

A handwritten signature in black ink that reads "Mori Rubin". The signature is written in a cursive, flowing style.

MORI RUBIN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 31
11500 W OLYMPIC BLVD
SUITE 600
Los Angeles, CA 90064-1753

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 31-CA-291825

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

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- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
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Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

(b) (6), (b) (7)(C)

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Garden
6630 Lankershim Blvd.
North Hollywood, CA 91606

Jordan A. Palmer , Head of Legal Dept.
Strippers United Inc.
1108 East Pico Blvd.
Los Angeles, CA 90021

(b) (6), (b) (7)(C)

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Vahe Khojayan

Lisa C. Demidovich , Partner at Bush Gottlieb
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(b) (6), (b) (7)(C)

UCLA School of Law, Labor and Economic
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(b) (6), (b) (7)(C)

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Andrea F. Hoeschen, ESQ., Assistant
Executive Director, General Counsel
Actors' Equity Association
165 W. 46th Street
New York, NY 10036

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

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- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

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in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

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- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

Exhibit D

CASE NAME: 21st Century Valet Parking LLC d/b/a Star Garden
CASE NUMBER: 31-CA-291825 et al.

Interest to: 12/31/2022

Claimant	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay + Expenses	Compound Interest	Excess Tax	Total Estimated Make-Whole Remedy Owed	4th Priority Estimated Total (6/9/22 to 12/6/22)	4th Priority (MAX \$15,150)
(b) (6), (b) (7)(C)	61,800.00	0.00	0.00	61,800.00	805.32	0.00	62,605.32	34,800.00	15,150.00
	32,800.00	0.00	0.00	32,800.00	419.71	0.00	33,219.71	20,800.00	15,150.00
	86,100.00	0.00	0.00	86,100.00	1,101.73	0.00	87,201.73	54,600.00	15,150.00
	41,000.00	0.00	0.00	41,000.00	524.63	0.00	41,524.63	26,000.00	15,150.00
	60,475.00	0.00	0.00	60,475.00	773.83	0.00	61,248.83	38,350.00	15,150.00
	67,600.00	0.00	0.00	67,600.00	953.30	0.00	68,553.30	48,800.00	15,150.00
	33,600.00	0.00	0.00	33,600.00	504.56	0.00	34,104.56	35,100.00	15,150.00
	45,100.00	0.00	0.00	45,100.00	577.10	0.00	45,677.10	28,600.00	15,150.00
	63,960.00	0.00	0.00	63,960.00	818.43	0.00	64,778.43	40,560.00	15,150.00
	43,050.00	0.00	0.00	43,050.00	550.86	0.00	43,600.86	27,300.00	15,150.00
	84,800.00	0.00	0.00	84,800.00	1,151.23	0.00	85,951.23	52,000.00	15,150.00
	83,800.00	0.00	0.00	83,800.00	1,005.60	0.00	84,805.60	55,100.00	15,150.00
	26,100.00	0.00	0.00	26,100.00	344.80	0.00	26,444.80	16,200.00	15,150.00
	85,800.00	0.00	0.00	85,800.00	1,149.93	0.00	86,949.93	52,000.00	15,150.00
	26,157.14	0.00	0.00	26,157.14	517.12	106.92	26,781.18	10,660.00	10,660.00
	73,800.00	0.00	0.00	73,800.00	944.34	0.00	74,744.34	46,800.00	15,150.00
	34,000.00	0.00	0.00	34,000.00	442.19	0.00	34,442.19	21,400.00	15,150.00
Total:	\$ 949,942.14	\$ -	\$ -	\$ 949,942.14	\$ 12,584.70	\$ 106.92	\$ 962,633.76	\$ 609,070.00	\$ 253,060.00

The Charged Party will make appropriate withholdings from the backpay portion due to the named employee(s).
The Charged Party will **NOT WITHHOLD** from the interest, excess tax and expenses portion due.
The Charged Party will remit a separate check for interest, excess tax, and expenses.